

REMARKS

Single Species

Although Applicant appreciates the Examiner's desire to limit the number of species being examined at any one time, Applicant contends that all claims in the present case, and certainly both independent apparatus claims 1 and 10, do constitute just such a single species.

To the extent possible, a review of the Examiner's rationale for the outstanding Restriction Requirement indicates that the Examiner believes that Figures 3-4, Figures 5-6 and Figures 7 each constitutes differing species.

In response, Applicant notes that Figures 3-6 merely illustrate differing aspects of the same firearm, with Figure 7 illustrating an alternative embodiment of the slide lever shown in Figures 3-4. That is, Applicant asserts that Figures 3-6 merely illustrate differing views of an integrated firearm apparatus, Figure 7 illustrating an improved slide lever which may be provided on the structure disclosed in Figures 3-6.

More specifically, a review of independent apparatus claims 1 and 10 will show that both independent claims recite the single species illustrated in Figures 3-6, the subject matter of Figure 7 being represented in dependent claims, such as dependent claims 4-7, 13-16 and 18. That is, claims 1 and 10 each only and solely recite the *single species* of Applicant's firearm as shown in Figures 3-6, with the alternative embodiment of a slide lever only be recited in dependent claims to independent claims 1 and 10.

As independent claims 1 and 10 each recite the single species of Figures 3-6, and given hat the subject matter of Figure 7 does not stand apart from claims 1 and 10 but is rather dependent thereupon, Applicants respectfully request that the Examiner withdraw the restriction requirement with respect t, at least, claims 1-19.

In particular, should the Examiner reassert the existing Restriction Requirement

and supporting rationale, Applicants respectfully request that the Examiner indicate where in the MPEP, or in other patent laws, guidelines or rules, it is permissible for the Patent Office to require restriction of a dependent claim from an independent claim on the basis of theses claims individually defining separate species.

Applicant respectfully requests that the Examiner point out how at least claims 1 and 10 define differing species, as well as explaining how the alternative slide lever of Figure 7, which is not even broadly recited in either claims 1 and 10, could be the basis for the outstanding Restriction Requirement.

Indeed, as recited in MPEP § 814, "*the particular limitations in the claims and the reasons why such limitations are considered to restrict the claims to a particular disclosed species should be mentioned if necessary to make the restriction clear*". In the present case, given that the only distinguishing feature indicated by the Examiner as prompting the outstanding Restriction Requirement is the differing views of the firearm in Figures 3-6, and given that the subject matter of Figure 7 can only be found in claims dependent upon independent claims 1 and 10, Applicant respectfully asserts that the Examiner's adherence to MPEP § 814 is indeed necessary to make the outstanding Restriction Requirement clear.

Method and Apparatus Restriction

With respect to the Examiner's rationale on separating method claim 20 from the apparatus claims 1-19 (defined by the Examiner as Species A, B and C on page 3 of the outstanding Restriction Requirement), the Examiner has stated that this restriction is proper as:

"the product can be made by a method that does not include the step of forming a protruding lip to extend beyond a plane and/or biasing a distal end of the protruding lip to extend beyond the plane."

Applicants respectfully disagree. As discussed in the specification and shown in

the drawing figures as originally filed, and as recited in independent claims 1 and 10 as well as method claim 20, having the protruding lip of the magazine follower extend beyond the plane of the wall of the firearm magazine is a key aspect of the present invention.

That is, it is simply incorrect to state that "the product" can be made by a method "*that does not include the step of forming a protruding lip to extend beyond a plane*", as this step is integral to the present invention.

Therefore, in addition to not believing that multiple species are defined in apparatus claims 1-19, Applicants also believe that the Examiner's rationale for restricting out method claim 20 cannot be borne out by a review of the specification itself, or the text of independent claims 1, 10 and 20.

Applicants also respectfully request that should the Examiner repeat the outstanding Restriction requirement, that the Examiner point out how the firearm of Figures 3-6 could be formed "by another and materially different process", MPEP § 806.05(f) (emphasis added); that is, without including "*the step of forming a protruding lip to extend beyond a plane*".

For the reasons cited above, applicant therefore respectfully requests that claims 1-20 be examined in total.

CONCLUSION

In view of the above remarks, Applicant respectfully requests withdrawal of the outstanding Restriction Requirement, and continued examination of claims 1-20 in total. Barring that, Applicants respectfully request that the Examiner consider claims 1-19 as reciting a single species, and examine claims 1-19 accordingly.

Should there be any question concerning the election of, or the arguments in support of withdrawal, the Examiner should not hesitate to call the undersigned attorney at the below-listed telephone number for discussion and resolution of the same.

Applicant believes no fee is due for this Response, however, should there be any deficiency in fees associated with the filing of this Response, please charge our Deposit Account No. 13-0235.

Respectfully submitted,

By _____

Nicholas J. Tuccillo
Registration No. 44,322
Attorney for Applicants

McCORMICK, PAULDING & HUBER LLP
CityPlace II
185 Asylum Street
Hartford, CT 06103-4102
Tel.: (860) 549-5290
Fax.: (860) 527-0464